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December 4, 2006

ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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*Re: Applications for the Assignment of License from Denali PCS, L.L.C. to
Alaska DigiTel, L.L.C. and for Transfer of Control of Alaska DigiTel, L.L.C.
WT Docket No. 06-114*

Dear Ms. Dortch:

In a filing with the Commission made on November 21, 2006,¹ counsel for General Communication, Inc. ("GCI"), on behalf of GCI and co-Applicants Denali PCS, LLC ("Denali") and Alaska DigiTel, L.L.C. ("DigiTel"), offered a possible condition on the Commission's potential approval of the transfer of control of DigiTel's PCS license to GCI. The condition proposed by the Applicants fails to address the central concerns raised in MTA Wireless' petition to deny regarding either the anti-competitive impact on the Alaska wireless market that consummation of the subject transaction would effect, or the protracted warehousing of scarce wireless spectrum by GCI. MTA Wireless hereby reiterates its opposition to approval of the proposed acquisition of control of DigiTel by GCI and submits that, at a minimum, an evidentiary hearing is required to determine whether the Applicants' transaction will result in a transfer of control and whether the public interest would be served by such a transfer.

If the Commission is in any manner inclined to permit consummation of the Applicants' transaction, MTA Wireless calls on it to consider meaningful conditions in the interest of maintaining a competitive wireless market in Alaska. The condition offered by the Applicants is apparently designed to address the Commission staff's concern with the potential sharing of proprietary information between Dobson Cellular Systems ("Dobson") and DigiTel as a result of GCI's acquisition of control of DigiTel while retaining its broad-ranging joint venture

¹ Letter from Carl W. Northrop, counsel for GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission.

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relationship with Dobson. The proposed condition – both in its original and modified forms disclosed by counsel for GCI -- is unworkable on several levels. To begin with, while the condition is purportedly designed to prevent non-public proprietary information of Dobson from being disclosed to DigiTel and non-public proprietary information of DigiTel from being disclosed to Dobson, GCI would itself have access under the arrangement, without restriction on use, to proprietary information of both Dobson and DigiTel. Since, according to the Applicants' proposal, GCI is intended to survive the parties' transaction as a competitor in the Alaska wireless market in its own right, holding only a "passive" investment interest in DigiTel, the proposed arrangement would ensconce GCI in a position of unique (and unfair) competitive advantage through its access to proprietary information of two major competitors in the market.

In order to avoid such adverse institutionalization of competitive advantage for GCI, the fallacy of GCI's role as a "gatekeeper" of information between DigiTel and Dobson must be recognized. In its place, some form of "Chinese wall" would need to be constructed within GCI itself to prevent employees and representatives that have access to proprietary information of Dobson from sharing that information with GCI employees and representatives that have access to proprietary information of DigiTel. GCI would have to be operationally "cleaved" in order to avoid the amassing of proprietary information from its two competitors, to the disadvantage of both of them and of its other competitors, like MTA Wireless and ACS Wireless. Not surprisingly, such a construct has not been proposed by GCI or its co-applicant, DigiTel, and it is hard to divine how such a structure could be meaningfully put in place or, once established, overseen for effectiveness by the Commission. The operational complexity of such a solution reveals its fundamental impracticality and ineffectiveness. Moreover, even if such an arrangement could be made to work, it would not fundamentally prevent implicit coordination from occurring among GCI, DigiTel and Dobson. Finally, no penalties are proposed for enforcement of the screening mechanism in the event of a violation; it is simply a proposal by GCI, which is the focal point between DigiTel and Dobson in this proceeding, to police itself.

The Applicants' proposed condition is, in fact, an ill-conceived sleight of hand to ignore or mask the inordinate aggregation of market power to which approval of the Applicants' transaction would lead. Most critical, in this regard, is the Applicants' effort to divert the Commission from the reality that consummation of their transaction would unavoidably lead to both *de jure* and *de facto* transfer of control of DigiTel to GCI. This reality has been exhaustively analyzed by both petitioner MTA Wireless and intervenor ACS Wireless in their filings with the Commission in this docket, the substance of which MTA Wireless hereby reaffirms and incorporates by reference.² The condition proposed by the Applicants, however,

² Supplementary Comments of MTA Communications, Inc. d/b/a MTA Wireless in Support of Petition to Deny Application, July 24, 2006 ("MTA Wireless Supplementary Comments"), at 3-9; MTA Communications, Inc. d/b/a MTA Wireless Reply to Applicants' Filings, September 6, 2006 ("MTA Wireless Reply"), at 3-20; Supplemental Comments of ACS Wireless, Inc., September 6, 2006 ("ACS Wireless Supplemental Comments"), at 24-34.

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assumes by its terms that GCI and DigiTel would continue post-transaction to operate as separately identifiable entities.

Formalize GCI's "Passive Investor" Role in DigiTel. If the Commission is prepared to consider a circumstance in which GCI will somehow act as nothing more than a "passive" investor in its competitor, DigiTel, as represented by the Applicants, the Commission cannot simply accept and rely on the stated intention of the Applicants. Instead, it must incorporate into its approval of the transaction conditions which take the Applicants at their word on this critical subject and formalize the terms of such a passive investment relationship. Such conditions have previously been identified in this proceeding by ACS Wireless, and would include amendment of the Applicants' June 16, 2006 Reorganization Agreement and Amended Operating Agreement to include:

- Elimination of GCI's ability to veto key managerial decisions that DigiTel would exercise as a stand-alone entity, most importantly GCI's control over DigiTel's budgetary (and, therefore, business plan adoption) process.
- Elimination of GCI's right to acquire the remaining, minority ownership interests in DigiTel which would, effectively, void any remaining terms of the Reorganization Agreement between the parties.
- Prohibition of GCI consolidating the results of DigiTel's financial statements with those of GCI, so that DigiTel will, effectively, continue to operate as a self-sustaining entity in the market and will be neither explicitly nor implicitly treated as an operating division of GCI.

Unwind GCI's Joint Venture Relationship with Dobson. Alternatively, if the Commission concludes – as MTA Wireless believes it must -- that approval of the application for transfer of control will result in GCI exercising operational control of DigiTel, regardless of what technical conditions are imposed on that acquisition, then MTA Wireless submits that the Commission must consider and address the anti-competitive impact that will result from the coexistence of a combined GCI-DigiTel entity with GCI's joint venture relationship with Dobson, the largest wireless operator in Alaska. Notwithstanding GCI's protestations that its relationship with Dobson is nothing more than a "normal reseller" arrangement, the record in this proceeding convincingly documents that GCI's joint venture Agreement with Dobson defines a collaborative relationship that far exceeds any form of "normal" resale arrangement.³ When considered in the context of their Letter of Intent of July 26, 2004 ("LOI"), the intention of GCI and Dobson to create a contractual framework for coordinated support of marketing and operational activities in the Alaska wireless market is laid clear.

³ See MTA Wireless Supplementary Comments, at 9-18; ACS Wireless Supplemental Comments, at 8-12; MTA Wireless Reply, at 21-25.

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Given the fact that the Commission's approval of the Applicants' transaction will unavoidably result in a reduction of leading competitors in the Alaska wireless market from four to three, it is critical that any such approval must entail conditions that would prevent GCI and Dobson from coordinating their activities as market leaders in such a manner as effectively to reduce the surviving state-wide competing entities from three to two. The pallid and unworkable proposal of the Applicants to establish GCI as the gatekeeper to guard against the exchange of proprietary information between Dobson and DigiTel misses the more obvious and essential target of preventing undue collaboration between Dobson and GCI themselves. The Commission could – and should -- prevent horizontal coordination of the market between these surviving entities by conditioning any approval of the Applicants' transaction on a requirement that GCI scale back its relationship with Dobson to all that it asserts it should be – a reseller arrangement. Such a condition would require GCI to terminate its LOI with Dobson in its entirety, since none of the undertakings is required for a simple resale arrangement.⁴

GCI should be further required to amend its _____ Agreement to eliminate all of its elements that are not required for a “normal” resale arrangement, including

Such a significantly scaled-back version of the parties' contractual relationship will help assure that GCI and Dobson will act as competitors of one another, rather than as joint venture partners coordinating their activities in the marketplace.

In addition, regardless of whether the Commission chooses to assure that GCI's involvement in DigiTel is restrained to that of a passive investor, as the Applicants represent they intend, or that GCI's collaborative relationship with Dobson is scaled back, it remains important for the Commission to take other steps to help assure a truly competitive wireless market in Alaska if the Applicants' transaction is permitted to be consummated.

GCI Should Divest Unused PCS Spectrum. First and foremost, GCI should not be permitted to continue to hoard the valuable state-wide PCS spectrum that it has warehoused since initially acquiring it in 1995. Had GCI acted not only to meet its regulatory build-out requirements, but actually to deploy facilities-based competition using its spectrum, neither its resale arrangement with Dobson nor its drive to acquire DigiTel would be required. The only actual use to which GCI has applied its state-wide PCS license is through its spectrum lease arrangement with Dobson (entered into just two years ago) for either _____ MHz of capacity, depending on how the parties' Long-Term *De facto* Transfer Spectrum Lease Agreement is interpreted. Since GCI has not used the balance of its license capacity to provide services to Alaska end users over the last 11 years, and since companies like MTA Wireless have a pressing

⁴ This condition should prove of no burden to GCI since it has represented to the Commission in this docket that the parties have been unable to reach agreement on implementing any of the joint undertakings described in that document. GCI letter to Marlene Dortch, September 15, 2006.

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need for spectrum that can be used before auctioned AWS spectrum will become operational, GCI should be required, as a condition of any approval of its agreement with DigiTel, to divest itself of the unused MHz of PCS capacity under its state-wide license. That capacity should be made available for lease or acquisition by other interested parties with a desire to provide mobile wireless services to their subscribers.⁵

Grant of Data Roaming Rights. Finally, any combined GCI-DigiTel entity should be required, as a condition of the Commission's approval of their transaction, to provide data roaming services on their system upon request and subject to commercially reasonable, non-discriminatory terms. MTA Wireless has demonstrated in this proceeding the increasingly critical role that access to data roaming services is playing in the competitive CMRS sector.⁶ The Commission has yet to address this need through the adoption of industry-wide standards. For participants in the Alaska wireless market, separated from the remainder of the country's CMRS market, the ability to roam at least throughout the state is vital to preventing smaller carriers, like MTA Wireless, from being squeezed out of existence as competitors in the field. By requiring a combined GCI-DigiTel entity to provide such services, upon request, on commercially reasonable, non-discriminatory terms, the Commission would help ensure that its approval of the Applicants' pending transaction will, in fact, serve to enhance and open competition in Alaska, and not to stifle or retard it.

Please direct any questions regarding these comments to the undersigned.

Sincerely yours,

/s/ Stefan M. Lopatkiewicz

Stefan M. Lopatkiewicz
Counsel to MTA Communications, Inc.
d/b/a MTA Wireless

cc: Attached service list

⁵ It is important to recall in this regard that approval of the Applicants' transaction would already entail a doubling of PCS spectrum available to DigiTel and its new controlling entity, GCI, since Denali, currently the lessee of 15 MHz of spectrum licensed to DigiTel, would be combined back into DigiTel.

⁶ See Comments of MTA Wireless on Filing of ACS Wireless, August 1, 2006, at 3-4, and attached Declaration of Richard Kenshalo, August 1, 2006, ¶¶ 6-7.

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